1947. K **File No.** O.I.P.(E.P.) 47 pt. II

Legal DEPARTMENT

A BRANCH

1715

Subject:—

Opinions under Indian Press Emergency Powers Act 1931.

For previous papers pl. see part I

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	~~R.I.No. 10260 29-6-1947~~		

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Office of the Raja.

Statement of the Case.

The article appearing in the issue of "National Guardian" dated 23-3-1947 under the heading "Who are the real wirepullers behind the dance of death in the Country" con ains a scathing criticism of the Muslim League leaders in the Provinces where the terrible human massacres and organised looting have taken place. According to the the author of the article " all these riots and mass killings are the joint handiwork of the third party and local leaders of the Pakistani-cult" and "the sword, the pickaxe and the stab knife are of course the exclusive monopoly of the the Muslim male of the league persuasion." The article no doubt has a tendency to foment communal hatred between the Muslims and Hindus; but the main attack is directed against some of the Muslim League leaders who have been trying to torpedo the non League Ministries in Provinces with the aid of goondas and since these leaders cannot be said to form a well defined group or class, the article will not come within the mischief of clause(h) of section 4(1) of the Indian Press(Emergency Powers) Act, 1931.

As the matter however is important the Advocate General is requested to favour Government with his opinion.

Sd/-

Secretary to Legal Affairs.

U.O. to the Advocate General, Bombay, No. 3446 dated the 9th April 1947.

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No. 23 of 1947.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
BOMBAY, 29th April 1947.

U.O.R. to the Advocate General, Bombay,—
No. 3445 dated 9th April 1947.

O P I N I O N.

This article is not only aimed at the leaders of the Muslim League, but it also attacks Leaguers in general. Phrases such as "The diabolical league were foreign vested interests that is responsible for the terrible massacres", "Counter tactics of the League". The sword the pickaxe and the stap knife are of course the exclusive monopoly of the Muslim mole of th the League Formation" read along with the rest, have a definite tendency to create hostility, ~~xxx~~ between In my opinion the "Leaguers" are a well defined and large class class and class and the article offends against Section 4(b) of the Press Emergency Powers Act

Sd/-

Advocate General.

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U.O.R. to Adv. Genl. No. 4344 dated 29-4-1947.

Statement of the case for opinion of the Advocate General.

PP.3-11 ante
PP. 37-41ante

As regards the articles published under the heading "Preparation for resistance" and "Gandhi's threat," published in the issues of the "Kal" dated the 24th October and 7th November 1946, respectively, the late R.L.A. (Mr.Moos) held that in so far as the articles advocated social and economic boycott of the Muslims, they came within the purview of clause(h)of sub-section (1) of section 4 of the Indian Press(Emergency Powers) Act, 1931

P.15 ante
P.45 ante

(see opinions Nos. 7713 dated 4-11-46 and 8464dated 26-11-46). Similar view has been expressed by the late R.L.A. in connection with the article under the heading "Infallible remedy against communal riots" published in the issue of the "Navayug" dated the 3rd November 1946(see opinion No. 8233 dated 20-11-1946).

PP. 1-3 of H.D. file 9737/4-N.(II)
P. 13 Do.

The present R.L.A., however, is of opinion that preaching of economic boycott by peaceful means would not amount to any offence (see opinion No.350-Confl.dated 17-1246.)

P.95ante

In view of the difference of opinion , the Advocate General is requested to give his opinion whether the aforesaid two articles published in the issues of the 'Kal' dated the 24th October and 7th November 1946 and the article published in the issue of the "Navayug" dated the 3rd November, 1946 fall within the purview of clause (h)of sub-section(1)of section 4 of the Indian press (Emergency Powers) Act, 1931.

PP.3-11and 37-41ante

PP.1-3of H.D. file 9737/4-N.(II)

Sd/- D.V.Vyas.
Remembrancer of Legal Affairs.

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U.R. to Advocate General No. 343 dated 11th January 1947.

No. 5 of 1947.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay, 27th January 1947.

U.O. to the Advocate General, Bombay,
No.343, dated the 11th January 1947.

OPINION.

The first of the three articles referred to in the Statement of the case is the one in the 'Kal' dated the 24th of October 1946. It preaches a social and economic boycott "on all these Muslims". The actual passage is at page 4 and is practically towards the conclusion of the Article. The whole of the earlier part is a denunciation of the "leaguers", that is to say, Muslim Leaguers, who are accused in the most direct terms of having, to put it shortly, organised the disturbances in Noakhali District, of having massacred Hindu women and children, having looted properties, of having declared a war against the Hindus and of having the intention of murdering the maximum possible number of Hindus. The social and economic boycott is advocated as a method of resistance and retaliation. It is true that such boycott is of non-congress or league Muslims and not of the Muslim community or the Muslims as a whole but in my opinion this distinction is one without a difference, for the purposes of the question involved.

Now, I agree with the learned Homeburgeor of Legal Affairs that the preaching of an economic boycott by peaceful means would not amount to an offence. This is correct, so far as it goes, i.e. if taken as a proposition in the abstract-in vacio as it were. But it may well be an offence when viewed in relation to other factors. The real point is whether the article as a whole falls within the mischief of Section 4(1)(4) of the Press Emergency powers Act which runs as follows:—

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Section 4(1) Whenever it appears to the Provincial Government that any printing press in respect of which any security has been ordered to be deposited under Section 3 is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which tend directly or indirectly.

(h) to promote feelings of enmity or hatred between different classes of His Majesty's subjects, etc.

For determining this question, the whole Article is to be looked at and that part which preaches the boycott must be considered in relation to the persons to whom it is addressed, the persons against whom the boycott is recommended the circumstances prevailing at the time the Article was published and the reasons for which the Hindu Community is called upon to initiate the boycott,-because what has to be determined is whether the Article as a whole tends to create hatred or enmity between one community or class and another. Hindus and Muslims are undoubtedly classes within the meaning of the section. The whole Article is a forth right attack upon the Muslims or at any rate the overwhelming majority of Muslims, imputing murder and the intention to murder, in no uncertain terms. terms. The Hindus are asked to retaliate, no doubt by non-violent means; but the tendency and in my opinion a very plain one is to excite in Hindus enmity and hatred towards the Muslims by a recital of the crimes alleged to have been committed and intended to be committed by the Muslims and calling for retaliation. There is no question, I think, that the Article would have a tendency no less strong though indirect to create in the Muslims hatred or enmity towards the Hindus if the boycott were in fact restored to. In my opinion this Article clearly falls within

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within the mischief of Section 4(1)(h).

The second Article is the one 'Kal' of the 7th of November. This Article repeats the strong recommendation for a boycott but again indulges in accusations against the Muslims suggesting that they started the riots in Bharastra, that they brought about the riots in the Kolaba District, that they have committed acts of agression against Hindus and that there is apprehension of further injury to the life, property and honour of Hindus. The Articles can not be said to be a mere recommendation of a social or economic boycott. Having regard to the excited feelings between the two communities at that time an' the general situation of unrest and apprehension, the Artiel tends to promote hatred and enmity.

The third Article is the one in 'Navyug' dated the 3rd day of November 1946. This directly charges the Leaguers with demonish atrocities and makes certain allegations against the Leaguers though milder in its terms than the Articles in 'Kal'. It purports to say that it contains no communal or communal hatred. How the tendency of such an Article for the purposes of Section 4(1) (h) has, as I have pointed out, to be judged primarily by its own contents but the other circumstances have also to be looked at. What may lead to no undesirable consequences in one set of circumstances may in other circumstances have the most undesirable consequences. Fuel by itself is harmless but if poured into a fire is undoubtedly calculated or tends to keep the fire alive. Though this Article is more moderate in its contents, in my opinion it has as much tendency to promote hatred and enmity.

I may point out that the words of Section 4(1) (h) are very wide. Comparison may be made with Section 153(a) of

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of the Indian Penal Code where a stricter degree of proof is required. The only test for the purpose of Section 4(1)(h) is whether an article tends to d certain things regardless of the intention of the writer, pointing, as I think, more to an appraisal of the particular words in relation to surroundin circumstances, and objectively, rather than to an appreciation of its meaning in vacuo. The Leaguers, it is true, are a political party and may not perhap be a class or community within the meaning of the section but there are references here and there to Muslims in general, and the Hindus in general to whom the appeal is directed may not discriminate between Leaguers and Non-leaguers. In all the circumstances it does not appear to me that any defence founded on the ostensible restriction of the boycott to the leaguers can hold water.

Sd/- C.K. Daphtary
27-1-47

Advocate General.

Bll.

U.O. to H.D. No 1217 of 6-2-1947.

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The difficulty experienced by the M.O. is quite genuine. There is one other aspect of this case which also deserves notice. Security can be demanded from the person keeping a printing press under section 3(1)and 3(3). Under section 4, whenever it appears to the Provincial Government that any printing press in respect of which any security has has been ordered to be deposited under section 3 is used for the purpose of printing or publishing any newspaper, etc. the Provincial Government may, where security has not been deposited, declare the press to be forfeited and may also declared copies of the newspaper, book, etc, to be forfeited. Under section 12(1)where a deposit is required from the keeper of a printing press under section 3, such press shall not be used for printing or publishing of a newspaper, etc. after the expiry of the time allowed to make the deposit until the deposit has been made; and under section 12(2) where any printing press is used in contravention of sub-section(1), the Provincial Government may, by notice in writing to the keeper thereof, declare the press to be foreited to His Majesty. It is conceivable that a keeper from whom security is demanded may immediately lodge an application in the High Court even within the time prescribed for making the deposit. If the argument were to prevail that once such an application is is lodged no further action can be taken until the High Court decides the application, Government will be equally powerless to make orders forefeiting the press or forfeiting the book, newspaper. document. etc. In other words, the working of the Act would have to be held completely in suspense until the Higher Court decides the application. That does not seem to be the intention of the Act, which, as its title shows, is intended to confer emergency powers. It is to be noted that under section 23(2), a special application is provided against the orders of forfeiture made under section 12(2)and such orders can be set aside under section 25(2).

Three courses are now open: (1) To make the order of forfeiture even while the application is pending; (2) to move the High Court to frame suitable rules to meet such cases, and (3)to amend the law. I am not aware of any rule of law by which an order of forefeiture, otherwise legally made, would be held to be contempt of the High Court

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High court merely because the original order demanding security is pending the High Court's consideration. The order of foreiture is in no sense irrevocable, for it is always open to the High Court, while setting aside the original order demanding security, to direct that the forfeited security be refunded or the forfeited press be restored. However, to be on the safer side, the opinion of the Advocate General may be obtained on this point.

Before undertaking any legislation, the High Court may be approached for framing rules providing for a stay order. Under section 27 of the Act, every High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications etc. The High Court in Burma made a rule by which the provisions of the Code of Civil Procedure and of the rules and orders of the High Court relating to the exercise of its original jurisdiction, including execution of decrees and orders, were made applicable to the procedure in regard to applications under the Act as well as to the execution of orders made on such applications. Our own High Court has not framed the rule in such wide terms but only makes the provisions of the Code of Civil Procedure and of the rules and forms of the High Court relating to execution of decrees and orders applicable to the execution of orders passed by the High Court on applications under ex section 23. It is doubtful, therefore, whether, as the rules stand, any prayer for stay can be made in the High Court, and the Public Prosecutor from whom enquiries were made informs me that there has so far been no instance of a party seeking stay.

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enquries were made informs me that there has so far been no instance of a party seeking stay. A rule on the lines of the Burma rules, with special reference to stay of injunction, can be made by the High Court, and I do not think that the High Court should have any objection to framing such a rule if Government's difficulties are explained to them. Once such a rule is framed unless the aggrieved party obtains a stay, Government would be at liberty to follow up the intial order within a an order of forfeiture. Furthermore, and an application for stay would necessarily result in the speedy disposal of the main application.

It is only if the remedies at Nos. (1)and(2)are found impracticable that legislation may be undertaken..

Sd/- P.N.L.
4-6

Secretary of Legal Affairs.

U.O. TO U.D. (Poll.) No. 5567 dated the 5th June 1947.

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Office of the R.L.A.

The Statement of the Case for opinion of the Advocate General.

Mr. R.L. Brijmohan in his letter addressed to "all officers and men in the Indian Army, Air Force and Navy" published in the issue of the Blitz dated the 18th January 1947 on the one hand has attacked(passage marked A) the Congress leaders saying "the old-fashioned leadership is taking us nearer and nearer to the grave. Unless some one steps in, the rot will continue and the Britishers will stay here for a century more", and on the other has exhorted the Army to take up the challenge so to say, saying (passage marked B)" we believe that it is the Army that will now rise up and intervene. There are plenty of you who have enough character, culture and training to turn out each into a Gol. Chah Guns. You have the making- only some one among you has to act in the role of the Netaji. We are sure you are very eager to do the job. Then why not save us from total annihilation,? He has gone further and in the same strain has encouraged the Army to rise upto the occasion, saying "you can count on our help to the fullest extent. He set an example by backing the great RIN "mutiny". We shall follow a policy of "Do or Die" when you order us to march on". He has again criticis the congress leadership(passage marked C) saying "we have not much faith in the Right Wing of the Congress. We think the RIN "mutiny" would have surely made 1857 over again but for the error of judgment on the part of the Congress We dos not and need not brood over past failures. We look to you for our very existence at present. Will you lead us?"

Passages marked B and C read with the passage marked A quoted above have an indirect if not a direct tendency, it appears, to seduce officers and soldiers in the military force of His Majesty from their allegiance and duty as to prejudice the discipline and administration of that force and therefore they would, it seems, fall under clauses(c)and(i) of section 4(1) of the Indian Pre (Emergency Powers)Act, 1931. These passages apparently would also come under section 131 I.P.C. (abetment of mutiny).

x As the matter is important, the Advocate General is requested to favour Government with his opinion.

Sd/- D.V.V.

Secretariat of Legal Affairs.

U.O. to the Advocate General, Bombay, No. 1205,dated the 5th February 1947.

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Office of the R.I.A.

We have at long last succeeded in recovering the papers from the Advocate General's office—of course, minus his opinion. The Junior Mr. Shah produced them on the 29th and said that they were lying on the Advocate General's table here. The Advocate General also now writes to say that this was quite accidentally overlooked.

2. I do not think that there could be any two opinions on the question whether this letter in the Blitz is actionable. It is to be read as a whole and calling the most liberal allowance customary in regard to newspaper publications of a political nature the tendency to prejudice the discipline and administration of the armed forces is obvious. The real sting is in the tail end of the passage wherein the writer thinks that t the R.I.N. "mutiny" would have surely made 1857 over again. In the immediately preceding paragraph, the writer says that they set an exampl by backing the great R.I.N. "mutiny"; and he assures servicemen in the following words: "You can count on our help to the fullest extent ..... We shall follow a policy of "Do or Die" when you order us to march on." In the earlier paragraphs, the writer voices his belief that the Army will now rise up and intervene— apparently in the political situation. The writer commends the example of Col. Shah Nawaz for imitation by servicemen. The writer's connection with the political party associated with the I.N.A. of which Col. Shah Nawaz was the leading figure cannot also be ignored.

3. When due regard is had to all these considerations, the conclusion is inevitable that the letter contains an open invitation to His Majesty Majesty's armed forces to help in accomplishing an armed political revol revolution in collaboration with sympathetic elements in the civilian population. We can, therefore, safely say that the letter undoubtedly falls under clause (i) of section 4(1) of the Indian Press (Emergency Powers) Act, 1931, in that it has a direct tendency to prejudice the discipline and administration of His Majesty's forces. The advice tende ed to the Government of India is correct.

4. The letter may also be actionable under clause(c) of section 4(1) on the ground that it tends directly or indirectly to seduce members of the forces from their duty. Such seduction is not merely the possibl result, but is the intended consequence of the appeals made by the letter, and under section 4 indirect tendency suffices.

P.T.O.

5. It may, however, be difficult to bring the article under section 131, Indian Penal Code, which requires something more than such tendency. The section requires an attempt to seduce or the abetting of the commission of a mutiny . Attempt is a stronger word than tendency, and for proving attempt we must have something amounting to more than mere preparation, and falling short of actual consummation and possessing, excepting for failure to consummate all the elements of the substantive act complained of. Presumably, neither the writer nor the newspaper has advanced beyound this general appeal; and it is therefore, doubtful whether the appeal ~~the~~ by itself can be treated as constituting an attempt to seduce the armed forces from their allegiance or duty. Naturally it may be still more difficult to establish an abetment, which can only be by instigation—— in this instance— of a mutiny as such.

On the whole, I think it quite safe in any case to take action under section 4(1)(i) of the Indian Press(Emergency Powers) Act as suggested by the Government of India.

7. If Government want to fortify themselves with the opinion of the Advocate General, the papers may be referred to him. He is due to return on the 14th instant.

Sd/-

Remembrancer of Legal Affairs.

U.R. to H.D.(Poll.), No. 236-Confl., dated the 4th June 1947.

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23-25

The question for consideration is whether the article "First anniversary of the Naval Rising", by itself or taken together with the cartoon "observe R.I.N. day" in the issue of the Student dated 15-2-1947 comes within Section 131 or 124A of the I.P.C. or any of the sections or sub-sections of the I.P. (E.P.) Act.

The article must be read as a whole, and in a fair, free and liberal spirit and not in the spirit of narrow criticism dwelling unduly upon an objectionable sentence there or a strong word there. The true test is: "What is the impression it produces on a man of common sense?".

Judged by that test, it is possible to bring the article within the scope of clause-(6) and at any rate of clause (1) of section 4(1) of the Indian press(Emergency Powers) Act. The purpose of the article appears to be recalling of past events, and the redressing of the grievances of the men of the R.I.N. There is hardly anything objectionable in the recital of events which have become part of history; and without anything more. The recital cannot be said to have a tendency, direct or indirect, to seduce men in the R.I.N. from their allegiance or duty, or to prejudice the discipline or administration of the naval force. The demand for justice is couched in restrained language and is not capable of such tendency by which word we do not mean a mere possible result, but something more.

The only objectionable feature of the article, so far as I can see, lies in its undercurrent which becomes almost perceptible in the quotation at the top, and in the exhortation to students not to rest till the men of the armed forces and the people of our country join together to win the freedom; and which is emphasised in the cartoon and its caption. In this, there is not only the suggestion but all indirect appeal to the men of armed forces to join the revolution in struggle for freedom. The means and methods of that struggle are, however, nowhere indicated. But the writting and the visible representation can be said to have a tendency, at least indirect, of prejudicing the discipline or administration of the armed - particularly naval - forces. They seem to be actionable under section 4(1)(1); and for that same reason it is possible to bring them within the purview of clause (6) as well.

They are, however, not strong enough to be actionable under section 12 or 131 of the Indian Penal Code.

As the question is not free from doubt. The Advocate General is requested to favours Government with this opinion.

P.T.O.

Sd/-

U.R. to the Advocate General.

K.R.D.
9-5-56
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CONFIDENTIAL.

No. 22 of 1947.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
BOMBAY, 16th JUNE 1947.

Re: Article in the Student of 19th February 1947.

OPINION.

The main purpose of the article is to ask for the redressing of the grievances of the R.I.N. men. That part of the article which covers the purpose is, as the R.L.A. says in his opinion, couched in moderate language. The rest of the article is a recital of certain events.

It is possible however, by taking the quotation at the top, the exhortation to the students, and the cartoon and its caption, to spell out an indirect tendency to the consequences mentioned in Section 4(1)(i) of the P.E.P. Act and possibly (c).

There is certainly no material for action under the I.P.C. and even as to 4(1)(i) and 4(1)(c), I would not be prepared to say that the tendency is so clear as that a Court could not take a view contrary to that expressed by the R.L.A. and myself.

Sd/- C.K. Daphtary.

Advocate General.

H.R.D. -
10-5-56.
C.4

U.R. to H.D.(Poll.) No 263-Confl. dated 17-6-1947.

Please see my note in the accompanying "Student" Case.

The article in question is entirely historical in character. It recite events which are only too well known and which have by now received wide publicity, and have already become the subject matter of an inquiry. In these circumstances, I find it difficult to spell out of the article a present tendency, direct or indirect, of the kind required by clause(a) of Section 4.(1). Nor is it possible to hold, in my opinion, that it tends in the present, to excite or encourage the commission of the offence of mutiny as involving violence as requested by clause (a). The utmost that can be said against the article especially when it is read with the material in the other two issues introducing the author and the promise by an admirer of the article to disseminate it -- is that it indirectly expresses approval or admiration of the offence of mutiny committed by the or alleged to have been committed by the author Hani, and also of course, admiration of the author himself. But the principle underlying explain Explaination (1) must receive due consideration in this behalf. "Work" in this context may have to be given a liberal meaning, so as to include journalistic writing; and as said before, it is difficult to gather the tendency required by clause(a). On the whole I feel doubtful whether it would be actionable under section4(1) or the Indian Press(Emergency Powers) Act.

It is certainly not actionable under sections 124A or 131 of the India Penal Code.

As the position is not free from doubt. The Advocate General is requested to favour Government with his opinion.

Sd/- P.M. Lad.

K.R.D. -
10-5-46
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U.M. to the Advocate General.

No. 34 of 1947.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay, 16th June 1947.

Re: Article "Unwritten history" in Forum issue of 26th January 1947.

OPINION.

The article is a recapitulation of events during the R.I.M. incidents in Bombay, by one who took a leading part in them. It is wholly a recital of facts by the author coupled with some self praise. By itself it does not fall within any part of Section 4 of the P.P.P. Act.

In my opinion even if the material in the two subsequent issues be read along with this article(viz. the para introducing the author, and the subscribers letter), the whole does not come within Section 4, even without invoking explanation (1) to the Section.

Assuming that the effect of all the articles together has some indirect tendency such as to attract Section 4(b), the explanation would apply and I agree with the R.I.A. on this head. I also agree that no action can be taken under Section 124A or 131 of the I.P.C.

Sd/- C.K. Daphtary
Advocate General.

U.R. to H.D.(Poll.) No. 262 confl. dated 17-6-1947.

H.R.D.
10-5-56
C.A.

Please see my notes in the accompanying forms and Student cases.

If these articles, and cartoons in the Peoples' Age these entitled (1) "R.I. N. strike in Bombay - from hour to hour-" (2) Kamal.(3) R.I.N. enquiry Report - an antique", and (4) Inside the Forces are by themselves not objectionable. Nor is (5) the cartoon at P.11 of the case.

But the whole lot of articles and cartoons., printed as they were in one and the same issue, must necessarily be considered together. The (6)cartoon at page 3, (7) The article entitled. "A historical Anniversary" and (8) The article entitled " Our Blood flowed together(mark the unusually bold type which shows where the the real emphasis is laid and (9) The article "Non Bombay Martyrs would, for the reasons, which I have given in the Student case, come under clause (i) of section 4(1) and possibly under clause(e) as well. I would invite special attention to the very relevant detail that in the flags shown on the ship in the cartoon at page 3 is also included the communist flag— The sickle and the hammer.

The articles and cartoons taken singly or together do not appear strong enough to warrant action under section 124A or 131 of the Indian Penal Code.

As, in view of my predecessors' opinion, the position is at-least not free from doubt. The Advocate General is requested to favour Government with his opinion.

Sd/- P.M.Lad.

H.R.D.-
10-5-46
C.4.

U.R. to the Advocate General.

No. 30 of 1947.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay, 16th June 1947.

Re:- Article and Cartoons in the People's Age issue dated the 23rd February 1947.

O P I N I O N.

Though these articles, being all in the same issue, must be read together and the Cartoons also have to be taken into consideration, it is only the two articles " a historic anniversary" and " our Blood flowed together" which in my opinion call for detailed attention. The remaining articles, at pages 9,19,21,25 of the file cannot support action under the P.E.P. Act or the I.P.C., and do not in any way affect the two articles above mentioned, ~~nor do I think that these two articles above mentioned,~~ nor do do I think that those two articles affect the others. The article "Inside the forces," is comment, strongly worded no doubt, upon the action, or rather inaction of the Government of India in regard to certain grievances. It would in any event be covered by Explanation 3 and 4 to Section 4. The criticism on the report at page 21 is in my opinion not actionable. The article at page 9 is in only a statement of events.

The two articles at pages 5 and 13, do in my opinion come within the mischief of Section 4(b) and possibly 4(1) and more remotely 4(c).

I would, however, for brevity's sake draw attention to the office note beginning at page 31 of the file with the further note at page 34, with which I entirely agree.

Sd/- C.K. Daphtary
Advocate General.

U.O. to H.D.(Poll.) No 264-conf dated 17-6-1947.

H.H.D.
10-5-56
C.A

Office of the R.L.A.

The article published in the issue of the "Watan" dated 11th May 1947 under the heading "One year of Congress Rule" professes to take stock of the administration in that year, particularly of the Civil Supplies, Revenue, Home and Education Departments. It purports to pass under review the actions and achievements of these Departments. It is no doubt actuated by a spirit of carping criticism. It also hurls personal reproach at the Ministers in charge of the Departments. In one instance it levels the following accusation, which is the most objectionable part of the article:-

> "Communalism and partiality have crept into the police Department. Many officers holding views opposed to the Congress have had to suffer and the police were reduced to the state of looking for instructions to the local Congress leaders. An atmosphere of one-sidedness was created in enforcing law and order. With a view to have one's own way, Sub-Inspectors, D.S.Ps. Prosecutors and in the end, even the Courts were changed."

Dishonest motives have in this instances been attibuted to the Minister in the administration of the Department concerned with law and order.

2. The question referred for the R.L.A.'s opinion is whether this article is actionable under section 4(1)(d) of the Indian Press(Emergency Powers) Act, 1931.

3. The expression "Government established by law in British India" has always been held to mean the existing political system as distinguished from any particular set of administrators; and a distinction has been invariably drawn between that abstract conception called "Government" and any particular administration.

4. The article may be viewed from two stand-points— (1) as an attack on individual Ministers and (2) as an attack on the administration by the Congress ~~Ministers~~ Ministry. As a result of the recent pronouncement of the Privy Council in Emperor v. Sibnath Banerji, 48, Bombay Law Reporter, P.C. Ministers may be regarded as officers subordinate to the Government, and to that extent the decision in Emperor v. Benoarsi, I.L.R. 1939, 2 Cal All has been modified. But even as such officers Ministers cannot be said to be the Government established by law. ~~They~~ By that expression is meant the person or persons collectively in succession, who are authorised to administer Government for the time being. One particular set of persons may be open to objection, and to assail them and to attack them and excite hatred against them is not necessarily exciting hatred against the Government, because they are only individuals and not representatives of that abstract conception which is called Government. Individuals may come and go, but the Government is supposed to remain. ~~The individual in~~

The individual is transitory and may be separately criticised."
(per Battey J. in Empero, V. Bhaskar, 8 Bom. L.R. 421). "The abstract n notion of Government is no doubt only reached by idealizing the concerete. But it is the system of Goverhment that section 4 contemplates and not the persons who, for the time being, carry on the details of the administration." (I.L.R. 39 Mad. 1085, at P. 1156.). Viewed as an attack on individual Ministers, the article would not, therefore, fall under clause (d)of section 4(1).

5. Viewed as an attack collectively on the congress Minstry, the article would not also be actionable. To criticise the Ministry as a whole (as distinguished from the system of government established in the country) would not be actionable even if such criticism is couched in language, which brings or attempts to bring into hatred or contempt or excites disaffection towards them. I quote below the following passage from Tek Chand J'S judgment in Parkash Chand v. The Crown, I.L.R. 18 Lahore 445 at PP. 474-5, as in my opinion it is a correct statement of the law on the subject:-

" in this connection it might be useful to point out the substantive part of section 124-A of the Indian Penal Code is substantially the same as thd English Statues dealing with sedition(60 Geo.III and I Geo.IV. c.8) where seditious libels have been defined as "libels tending to bring into hatred or contempt the person of the King, or his government, or constitution as by law establshed etc." similar words occur in Stephens' Digest of Criminal Law of England (Act, 96-98). Which contains an authoritative summary of the law of England bearing on the point. It is hardly necessary to say, that in England, the the party in Opposition is constantly criticizing the ministry in power for the time being, ~~and by speeches and in power for the time being,~~ and by speeches and writing is trying to bring it, as well as its individual members, into hatred and contempt, so as to bring about their early downfall. And yet it has never been suggested that such speeches or writings are indictable as sedition. As pointed out by Odgers in his standard work on the Law of Liebl and Slander (sixth edition,P. 420) the word "Government in these statutes means "not so much a particular set of ministers, as the political systems settled by the Constitution, the general order and discipline of the Realm. * * * * * * * * The learned author also observes that it is clearly of ~~arguments~~,"legitimate and constitutional to endeavour by means of arguments, addressed to the people, to replace one set of ministers by another. And the prrecise object of such arguments is to bring the minsters now in office into dis-esteem, and to alienate from them the affections of the people".

This is the law in England. I have no doubt that the law in India is not different."

6. I would like to add that it is difficult to read in the statement that in the end even courts have been got changed a tendency to bring into contempt the administration of justice as such. The criticism is not that Courts have been dishonestly giving decisions to suit the dictates of the Ministers(compare 56 Bombay 472); but that special Courts have been got established and the normal adminstration of justice thus got changed, which is charged against the Ministry as a blameworthy act.

P.T.O.

On the whole, therefore, in my opinion, the article, when read in a free, fair and liberal spirit and making due allowance for intemperate language which is the stock in the trade of demagogues, should not fall within section 4(1)(d) of the Indian Press(Emergency Powers) Act, 1931.

Sd/- P.M.I
19-6

Remembrancer of Legal Affairs.

U.O. to H.D.(Poll), No. 221-confl., dated 19th June 1947.

Memo.
20-6-50
C.4

45-47

Statement of the case — Office of the R.L.A.

It appears that the keeper of the press and the Publisher of "Agrani" were asked to deposit securities under section 3(3) and section 7(3) respectively of the Indian Press (Emergency Powers) Act, 1931. Accordingly they did furnish securities but were also applied to the High Court under section 23(1) to set aside the orders of Government. Pending these applications both the keeper of the press and the publisher of "Agrani" have published matters of the nature falling under section 4(1) with the result that their securities have been rendered liable to forfeiture. However, as the R.L.A. has advised in his opinion No.161-C confidential dated the 17th April 1947 that pending application before the High Court under section 23(1) of the Indian Press (Emergency Powers) Act, 1931, no order forfeiting the deposit can be passed, Government has stayed its hands. While referring the case for the R.L.A. secretary, H.D. observed:-

P.47 of loose papers below.

PP.15-16 ante

"The point does not seem to be entirely free from doubt. No order has been issued by the High Court restraining Government from taking further action in respect of the deposit. There are bound to be practical difficulties if an appeal to the the High Court and the issue of a show cause notice on it is to be taken as restraining Government from taking further action in respect of the deposit. The appeal may take a long time to decide. In a Sind case, it took two years. In the meantime Government's hands will be unnecessarily tied. I feel that the point is of such importance that if the the present Act debars Government from taking further action in respect of the deposit where an appeal is filed and further security can also not be demanded recommended it may be necessary to undertake amending legislation."

PP. 17-19 ante.

In his opinion No. 5067, dated 5th June 1947 the R.L.A. held: "The difficulty experienced by the H.D. is quite genuine. There is one other aspect of this case which also deserves notice. Security can be demanded from the person keeping a printing press under sections 3(1) and 3(3). Under section 4, whenever it appears to the Provincial Government that any printing press in respect of which any security has been ordered to be deposited under section 3 is used for the purpose of printing or publishing any newspaper, etc, the Provincial Government may, where security has not been deposited, declare the press to be forfeited and may also declare copies of the newspaper, book, etc, to be forfeited. Under section 12(1) where a deposit is required from the keeper of a printing press under section 3, such press shall not be used for printing or publishing of a newspaper,

etc. after the expiry of the time allowed to make the deposit until the deposit has been made; and under section 12((2) where any printing press is used in contravention of sub-section (1), the Provincial Government may, by notice in writing to the keeper thereof, declare the press to be forfeited to His Majesty. It is conceivable that a keeper from whom security is demanded may immediately lodge an application in the High Court even within the time prescribed for making the deposit. If the argument were to prevail that once such an application is lodged no further action can be taken until the High Court decides the application, Government will be equally powerless to make orders forfeiting the press or forfeiting the book, newspaper, document etc. In other words, the working of the Act would have to be held completely in suspense until the High Court decides the application. That does not seem to be the intention of the Act which, as its titile shows, is intended to confer emergency powers. It is to be noted that under section 23(2), a special application is provided against the orders of forfeiture made under section 12(2) and such orders can be set aside under section 25(2).

Three courses are now open: (1) To make the order of forfeiture even while the application is pending; (2) to move the High Court to frame suitable rules to meet such cases, and (3)to amend the law. I am not aware of any rule of law by which an order of forefeiture, otherwise legally made, would be held to be contempt of the High Court merely because the original order demanding security is pending the High Court's consideration. The order of forefeiture is in no sense irrevocable, for it is always open to the High Court, while setting aside the original order demanding security, to direct that the forfeited security be refunded or the forfeited press be restored. However, to be on the saferside, the opinion of the Advocate General may be obtained on this point."

As Government desires to have the Advocate General's opinion on the point, he is requested to favour Government with his opinion.

Sd/- P. M.L
13-6-47

Remembrancer of Legal Affairs.

U.R. to the Advocate General, Bombay, No. 6159, dated the 14th June 1947.

M.R.D.
10-5-56
C.4

No. 33 of 1947.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay, 16th June 1947.

U.O. to the Advocate General, Bombay, No. 6139, dated the 14th January 1947.

O P I N I O N.

I agree with the opinion expressed by the R.L.A. unless and until the the Court holds that the demand for security was not justified, Government Government's action in asking for security must be taken to be good in la and all the consequences can follow as upon the security having been prope perly demanded and deposited.

Government can accordingly proceed to forfeit the security, when occasion arises. The mere fact that an application under Section 23(1) is pending does not in any way fetter — Government hands. If it was not so, as pointed out in the — R.L.A.'s opinion, the paper would have a sort of license to — offend against the Press Emergency Act, for the period that the application under Section 23 is pending.

here being no order as yet of the Court against Government, no question of contempt can possibly arise.

Sd/- C.K. Daphtary

Advocate General.

U.O. to H.D. (Fcell). No. 6247 dated 17-6-1947

H.R.D.—
10-6-47
C.A.